dants were elected chairman and vice-chairman respectively.

To my mind, this motion can be determined on the narrow ground whether it is just and proper to grant a temporary injunction at the suit of a member of an unlawful society to restrain other members of that society from doing acts contrary to the rules of the constitution of the Congress.

Jurisdiction to grant a temporary injunction is always a matter of discretion which is to be exercised in accordance with well-known principles. An order for a temporary injunction can be sought only in aid of a prospective order for a perpetual injunction. If, therefore, in the event of the plaintiff's success, he cannot obtain a decree for perpetual injunction, it is not competent for him to ask for a temporary injunction (see *Bishun Prashad* v. *Sashi Bhusan*).[3] In other words, a temporary injunction will not be granted in cases where a permanent injunction is not available under sections 52 to 54 of the Specific Relief (Malay States) Ordinance, 1950. Section 54(f) enacts that an injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced. This means that a court will not grant an injunction to prevent the breach of a contract if the contract be such as cannot be specifically enforced under the provisions of Chapter II of the Ordinance, for example section 20(b). The grant of injunction therefore is always guided by the same principles as the grant of specific performance of a contract, and if the contract is such as not to be capable of being specifically enforced, no injunction can be granted to prevent its breach.

The facts of the present case make it more analogous to such cases as *Harris* v. *Amery* [4] and *Bhikaji Sabaji* v. *Bapu Saju.*[5] In *Harris'* case an association of more than twenty persons for the purpose of acquisition of gain was not registered as required under section 4 of the English Companies Act, 1862, and was therefore illegal. That being so, the members could not rely on their agreement for establishing any right in a court of law. That case was applied by Sargent, J. in *Bhikaji Sabaji* v. *Bapu Saju,*[5] a case under the Indian Companies Act (X of 1866) which is in effect identical with section 4 of the English Act. That case also concerns an agreement between more than twenty persons to form an association for the purpose of carrying on a business that has for its object the acquisition of gain. Such an association as in *Harris'* [4] case must be registered under the corresponding Companies Act. The said association was not registered; it was therefore an unlawful association. A member thereof, so it was held, acquired no right under the said agreement which can be enforced in a court of law. The court accordingly refused to grant an injunction at the suit of a member to restrain a breach of such agreement. It is almost in the same vein that Leach J. remarked in *Soh Hood Beng* v. *Khoo Chye Neo* [6] (at p. 119):—

> ". . . . if once you ascertain that a company association or partnership is illegal or unlawful then neither can the company, association or partnership sue nor be sued by its members".

I am of the view that the principles enunciated in the above cases are applicable to our present case. The Societies Act, 1966, having declared the local branch to be unlawful, no member can acquire any right which is founded upon that which is so declared to be unlawful. This court will therefore not lend its aid in granting an injunction to restrain the defendants by themselves, their servants, and/or agents from infringing or violating the rules of the Constitution of the Malaysian Indian Congress.

The motion is accordingly dismissed with costs.

Motion dismissed.

Solicitors: *Ranjit, Thomas & Kula; Athi Nahappan & Co.*

TOPAIWAH v. SALLEH

[F.C. (Azmi C.J. (Malaya), Suffian & MacIntyre F.JJ.) March 11, 1968]

[K.L. — Federal Court Civil Appeal No. X.92 of 1966]

Damages — Quantum of — Negligence — Personal injuries — Loss of earnings — Pain and suffering and loss of amenities — Reversing the finding of a trial judge as to amount of damages.

This was an appeal against the quantum of damages awarded by the High Court at Johore Bahru. The learned trial judge awarded $32,012.60 altogether being (1) $5,675 special damages (2) $27,337.60 general damages. The general damages were made up of two items: (1) $8,337.60 for future loss of earnings and (2) $19,000 for pain and suffering and loss of amenities. There was no complaint against the award of $8,337.60 for future loss of earnings but it was against the award for special damages and for pain and suffering and loss of amenities that the appellant complained.

Held, dismissing the appeal: the Federal Court will be disinclined to reverse the finding of a trial judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the judge acted on some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it an entirely erroneous estimate of the damages to which the plaintiff is entitled. The assessments which the courts have made over the years form some guide to the kind of figure which is proper and which the Federal Court will follow in the light of the special facts of each particular case.

Cases referred to:—

(1) *Ilkiw* v. *Samuels* [1963] 1 W.L.R. 991.

(2) *Rodocanachi* v. *Mibburn Brothers* (1887), 18 Q.B.D. 67, 78.

(3) *Flint* v. *Levell* [1935] 1 K.B. 354, 360.

FEDERAL COURT.

K. E. Hilborne for the appellant.

P. K. Nathan for the respondent.

Cur. Adv. Vult.

Azmi C.J. (Malaya): This is an appeal against the quantum of damages awarded by the High Court at Johore Bahru. The learned judge awarded $32,012.60 altogether being (1) $5,675 special damages (2) $27,337.60 general damages.

The general damages are made up of two items:—

(1) $8,337.60 for future loss of earnings,

(2) $19,000 for pain and suffering and loss of amenities.

There is no complaint against the award of $8,337.60 for future loss of earnings but it is against the award for special damages and that for pain and suffering and loss of amenities that the appellant complains.

Now as to the award for special damages first. It was contended that this should not be awarded at all or if an award under this item should be made it should be only for loss of wages for 9 months which would amount to $270 \times 9 = $2,430. Before I refer to the argument on the question of special damages, I had better refer to the pleadings. Paragraph 7 of the statement of claim says as follows:—

"The plaintiff was aged 40 years and worked as a kampong worker earning at an average of $10 a day. As a result of the aforesaid negligence the plaintiff has been unable to continue in his employment and has lost his means of earning a living. He is now dependent on the charity of his friends."

Paragraph 8 says as follows:—

"(a) ....

(b) Special damages as set out in paragraph 7 above."

It was contended by Mr. Hilborne that the above pleadings were not sufficient for the purpose of a claim for special damages.

In support of his contention, Mr. Hilborne cited to us the case of *Ilkiw* v. *Samuels*.[1] This was an action for damages on the ground of negligence and was not heard until about 8 years after the accident happened. The learned judge awarded £4,000 as general damages in addition to £77 claimed and pleaded as special damages.

The Court of Appeal reduced the figure on the ground, as I understand the judgment, that the very large figure of general damages at which the judge had arrived could be explained only on the basis that it contained a very substantial, though concealed, element of past loss of earnings, which had not been pleaded or that the award was a wholly erroneous estimate of the plaintiff's loss. In either case the Court of Appeal considered that it was bound to interfere.

Mr. Hilborne suggested that we should not allow this amount altogether. In my view this claim has been sufficiently pleaded; indeed Mr. Ramachandran who appeared in the lower court conceded that special damages were payable, albeit up to August 1964. Clearly the pleadings caused no surprise and no injustice to the appellant. This question should be considered therefore only on the ground as to whether it was a wholly erroneous award of the plaintiff's loss. The amount allowed by the judge was for a loss of earnings for 21 months. He gave reasons for coming to that decision and in my view the amount was reasonable (considering that as a result of his injuries the respondent had been unemployed for three years) and for that reason the appeal on this ground should be dismissed.

As to the appeal on quantum of general damages, Mr. Hilborne said he had no complaint against the first part of it namely the award of $8,337.60 for future loss of earnings but he submitted that the balance of $19,000 for pain and suffering and loss of amenities is excessive and he cited to us several cases where for more or less similar injuries, the courts had awarded much less. He suggested that under this heading, the judge should award a figure between $8,000 and $10,000 for injuries to the body and loss of amenities so that the total under this heading and special damages should amount to between $18,000 to $20,000.

The difficulty of laying down the principles on which damages are awarded has frequently been recognized. However, as Lindley L.J. in *Rodocanachi* v. *Mibburn Brothers*[2] stated:—

"It must be remembered that the rules as to damages can in a nature of things only be approximately just, and that they have to be worked out, not by mathematicians, but by juries."

Or another way of putting it — that it is a matter of assessment but not of calculation. So far as this court is concerned we should, to paraphrase Greer L.J. in *Flint* v. *Levell*[3] be disinclined to reverse the finding of a trial judge as to the amount of damages merely because we think that if we had tried the case in the first instance we would have given a lesser sum. To justify reversing him, we should be convinced that he acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it an entirely erroneous estimate of the damage. The assessments which the courts have made over the years form some guide to the kind of figure which is proper and which the appellate court will follow in the light of the special facts of each particular case.

In this case, according to the medical evidence, not only would the plaintiff be unable to

work any longer as a coconut plucker, but his knee injury would be permanent, his left arm deformed, and he would from now on walk with difficulty.

If I had tried this case in the first instance, having regard to previous awards in more or less similar cases probably I would not have awarded as much as $19,000 but I am not convinced that the trial judge acted upon some wrong principle of law, or that the amount awarded was so extremely high as to make it an entirely erroneous estimate of the damage to which the respondent is entitled.

I would therefore, dismiss the appeal with costs.

Suffian and **MacIntyre F.JJ.** concurred.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Elyas Majeed & Co.*

TAN SENG KIM v. KOH SUAT ENG & ANOR.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Winslow J.) March 14, 1968]

[Singapore — Federal Court Civil Appeal No. Y. 35 of 1967]

Damages — Negligence — Contributory negligence — Personal injuries — Victim dying some three years after accident for reasons not connected with accident — Method of assessing general damages.

Damages — Personal injuries — Death intervening through causes unrelated to accident — Proportional reduction of damages.

Damages — Personal injuries — Comminuted fracture of tibia and fibula — Comminuted central fracture-dislocation of right hip joint — Simple fracture-dislocation of left shoulder.

This was an appeal against the judgment of Kulasekaram J. who found the appellant liable in an action for negligence in driving his car to the extent of two-thirds of the total damages assessed at $25,338.

At about 9 p.m. on December 22, 1960, the appellant was driving along Jalan Besar in the direction of Lavender Street when he collided with one Koh Hock Wah (hereinafter referred to as the deceased) a school teacher, aged 52 years, who was then crossing Jalan Besar from left to right in front of him. The deceased suffered severe injuries as a result of this accident but he made good recovery despite some residual disabilities. He subsequently died some 3 years and 7 months later but not for reasons connected in any way with the collision and the respondents accordingly brought this action on behalf of his estate. The deceased was treated as an in-patient at the General Hospital for three and half months after which he was discharged and he thereafter continued treatment as an out-patient for a little under seven months. The trial judge found that the accident could have been avoided if the appellant had maintained a reasonable speed and kept on his side of the road. Although there was some contributory negligence on the part of the deceased which was apportioned at one-third of the total responsibility, the trial judge awarded $20,000 as general damages.

Held, allowing the appeal partially: (1) in assessing general damages, there are broadly three heads to be considered, *viz.*: (i) pain and suffering; (ii) loss of amenities of life; and (iii) loss of future earnings. In this appeal no question arose under the third head;

(2) from the record, it did not appear that either counsel in the court below took the point with a view to showing the principle on which damages under the remaining two heads should be assessed where death intervenes through causes unrelated to the accident at an age far lower than the normal span of life;

(3) had the deceased not died before the trial at a far earlier age than the normal life expectation through causes having nothing to do with the injuries sustained in this accident, it would have been difficult to criticise the award of $20,000 damages under these heads. But he died much earlier and, in the circumstances, both logic and realistic approach demand that damages under these heads should be proportionally reduced, more so in the case of loss of amenities of life than perhaps in the case of pain and suffering;

(4) the appeal will be partially allowed to the extent that the assessment of general damages at $20,000 be reduced to $15,000. The total amount of general and special damages will accordingly be reduced from $25,338 to $20,338. As the appellant's liability is only two-thirds of this amount, the judgment which was entered in the sum of $16,892 for the respondents against the appellant will be altered to one for $13,559.

FEDERAL COURT.

C. S. Wu for the appellant.

S. Santhiran for the respondents.

Cur. Adv. Vult.

Winslow J.: This is an appeal against the judgment of Kulasekaram J. who found the appellant liable in an action for negligence in driving his car to the extent of two-thirds of the total damages assessed at $25,338.

At about 9 p.m. on 22nd December, 1960, the appellant was driving a motor-car SU 4441 along Jalan Besar in the direction of Lavender Street when he collided with one Koh Hock Wah (hereinafter referred to as the deceased) a school teacher, aged 52 years, who was then crossing Jalan Besar from left to right in front of him. The deceased suffered severe injuries as a result of this accident but he made good recovery despite some residual disabilities. He subsequently died some 3 years and 7 months later but not for reasons connected in any way with the collision and the respondents accordingly brought this action on behalf of his estate.

Traffic in Jalan Besar, which is not one of our most salubrious thoroughfares, was quite heavy at the material time. On the facts found by the trial judge, the appellant was driving his car at a speed of at least 25 miles an hour, if not more, on the wrong side of the road in circumstances which made him conclude that the appellant was primarily to blame. He was then overtaking a taxi at a speed which was found to be excessive in all the circumstances of the case, having regard to the state of traffic in Jalan Besar, on both sides of which there were parked